IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1831 of 1987

with

FIRST APPEAL NOS.1832 TO 1841 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

HARBHAM VIKRAMSINH

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner
MR PG DESAI, GP, for Respondents in First Appeals Nos.1831 to 1836/87.
MR AJ DESAI, AGP, for respondents in First Appeals Nos.1837 to 1841 of 1987.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE J.R.VORA

Date of decision: 27/01/98

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

In this group of 11 appeals under section 54 of the Land Acquisition Act, 1894 (Act), common questions are involved arising out of common judgment of reference Court - 3rd Extra Assistant Judge, Rajkot District, at Gondal, rendered on 24th December, 1985. Therefore, they are being disposed of by this common judgment.

The appellants are the original claimants whereas the respondent in the entire group was the original opponent before the reference Court. Pursuant to notifications issued under section 4(1) dated 8.12.77, 1.6.78, 10.3.78n and 20.3.79, various parcels of revenue survey numbers situated in the sim of village Rajpara in Rajkot district came to be compulsorily acquired for the purpose of the project of Venu Dam No.2 which was sought to be constructed for the irrigation and agricultural purposes. The Land Acquisition Officer by exercising his powers under section 11 of the Act awarded Rs.120 per Are for bagayat land and Rs.65 per Are for jirayat land in respect of four land acquisition reference cases bearing Nos.132/77, 91/78, 153/79 and 36/78. Notifications under section 6(1) acquiring the land bearing survey Nos.68, 13 (Part) etc. of different agriculturists came to be published on 27.2.78, 6.3.80, 23.11.78 and 6.11.78.

Being dissatisfied by the awards under section 11 of the Act, the owners and the original claimants desired for reference under section 18 of the Act to the court of Assistant Judge of Gondal of Rajkot district. Thus four land reference cases came to be decided by the reference Court.

The factual highlights of the aforesaid awards are narrated hereinafter:

Award No.	Land refe- rence case No.	Survey No.	Remarks
132/77	596/82	68	there was a well
91/78	1/82 to 5/82		
153/77	121/82 & 127/82		
36/78	133/82 to 135/82	13 Paiki	

The reference Court upon analysis of the evidence and

assessment of the documents reached to a conclusion that the lands under acquisition were of, as such, bagayat lands and not jirayat lands and awarded an additional amount of compensation of Rs.60/-. The total amount of compensation came to be awarded at Rs.180/- per Are for all parcels of land holding that there was no question of any jirayat land. Thus, uniformly, an amount of Rs.180/came to be awarded per Are in respect of acquired bagayat lands. The reference Court has also placed reliance on witnesses as well as documentary evidence in the form of sale instance produced at Ex.34. The original claimants, appellants herein, claimed an amount of Rs.240/- whereas the reference Court awarded only an amount of Rs.180/- per Are. The claimants filed this group of 11 appeals challenging the legality and validity of the award and common judgment of the reference Court by invoking the aids of provisions of section 54 of the Act.

The only, but important, question which falls for consideration and adjudication in this group of appeals is whether the claimants are entitled to market value at the rate of Rs.240/- per Are in respect of the acquired land in the light of the evidence on record as claimed by them. Reliance is placed on the evidence of sale instance at Ex.34. The following aspects have emerged unquestionably from the evidence on record.

(1) That Ex.34 is a sale deed in respect of survey No.90/3 which is situated in village Kolki.

(2) It is a registered sale deed dated 13.4.73.

(3) The market price is shown at Rs.250 per Are of an agricultural property which is admittedly jirayat unlike the case of bagayat in the case of group of matters in hand.

(4) Ex.34 is almost 4 years and more old than the notification under section 4(1) which came to be published in 1977 and 1978 in respect of cases in hand.

(5) The registered sale deed at Ex.34 is proved in the evidence of the purchaser one Jamnadas Khimjibhai, who was examined at Ex.33.

(6) Ex.34, a sale instance, whereby four acres of land came to be purchased by Jamnadas who was examined before the Court.

There is no dispute about the fact that there was no sale transaction in respect of any parcel of land in so far as village Rajpara is concerned. There is also no dispute about the fact that village Rajpara is in vicinity of village Kolki and the distance between, at the best, as shown from the record is 2.5 k.m. and it is also found that in some parts, both the villages, i.e. Rajpara and Kolki are adjoining. Thus it becomes clear that both the villages are nearby and the sale deed at Ex.34 in respect of agricultural jirayat property is a part and parcel of neighbourhood.

It is a settled proposition of law that if a sale instance of the same village or of the same land is not available, then in that case, where there have been recent sales of some land, to guide the Land Acquisition Officer or the Court, the market value must be considered and determined by sales of similar lands in neighbourhood. It is an indicium and really value indicium as to the value of the property to ascertain what price has been obtained for the land recently in the neighbourhood. The price paid within a reasonable time for the land adjacent to the land acquired possessing similar advantages, obviously, is a correct method of assessment.

It is a settled proposition of law that while interpreting and examining the provisions of section 23, the Court is obliged to consider the claim of higher rate on the basis of compensation awarded to comparable land. The higher rate of compensation awarded for acquisition for public purpose under the Act and a comparable land of the claimant himself or any other person situated in close proximity of the land in question and, that too, 4 to 5 years before by a registered sale deed in respect of the same nature of land, like that, agricultural, would, obviously, constitute a very good guide and as such reliable basis for making an assessment and awarding market value to the owner whose lands are covered under the compulsorily acquisition.

When the transaction which is sought to be compared or which is sought to be used as a comparable sale instance is of interior or is of past, obviously, it becomes obligatory for the Court to consider the appreciation of the land at the rate of 10 to 12 per cent, if not more, so that it could reflect the correct and coherent market value of the land compulsorily acquired later on. It may be mentioned that, in the present case, there is not even a remote allegation of lack of bonafide in so far as sale instance at Ex.34 is concerned. So it is a bonafide

transaction of purchase of land adjacent to the land acquired and possessing similar advantages. Therefore, the same, obviously, provided an alternative means of estimating the market value.

Now, it is well settled that the best method to determine the true market price of any land or property under acquisition on the date of publication of notification under section 4(1) is to base on instances or transactions of sale of some land or portion of land having taken place by about the same time at the same place or a portion of land of neighbourhood. Thus the next bast method and mode is to look for other instances of sale comparable in time and quality. In other words, the instances of sale transactions should have been in respect of land in the near locality or in the neighbourhood having the same or similar advantages or disadvantages as the lands under acquisition. No doubt, those instances must also be nearer in point of time of the notification published under section 4(1) of the Land Acquisition Act for acquisition of the land. In the case on hand, the first notification under section 4(1) came to be published on 8.12.77, whereas, the date of registered sale deed at Ex.34 is of 13.4.73, which has been proved in evidence of purchaser Jamnadas Khimjibhai who has clearly testified his evidence at Ex.33 that the advantages, types and quality of the lands acquired and the parcel of land he purchased are almost equal and similar. They are not only situated in the close proximity, but they are comparable units. No doubt, the land covered under registered sale deed at Ex.34 is a jirayat land, like that, non-irrigated land, whereas, the land under acquisition are held to be irrigated land and rightly so. As per Ex.34, the market value came to be assessed of land in village Kolki which is adjoining to village Rajpara at Rs.250/- per Are. Whereas, the reference Court has assessed the market value of the land under acquisition at the rate of Rs.180/- per Are holding that they are irrigated lands. Nothing has been successfully shown from the impugned common judgment as to why the comparable sale instance produced at Ex.34 showing the price of market value at the rate of Rs.250/per Are is not accepted and followed despite the fact that it was four years prior to the date of the notification under section 4(1) and it was non-irrigated parcel of land. Therefore, in our opinion, the reference Court fell in serious error and committed illegality while making assessment of compensation and determining the market value at the rate of Rs.180/- per Are globally. The learned Assistant Government Pleader has not been able to point out as to why even at this stage

we should discard the documentary evidence at Ex.34. Nothing has been shown to our satisfaction which would prompt us to hold that the assessment of market value made by the reference Court is justified. In fact, we are satisfied that it is not justified and that the claimants, as such, would be entitled to at least an amount of Rs.250 per Are if not more. However, the appellants have restricted their claim and have demanded only an amount of Rs.240/- per Are by way of market value, but for that we would have awarded more. In our opinion, therefore, the claimants are found entitled to an amount of compensation at the market rate of Rs.240/per Are instead of Rs.180/- with permissible proportionate cost and interest from the date of possession till the date of payment.

However, we cannot be oblivious to a fact which has come to our notice during the course of hearing of this group of matters. It was found by us that the reference Court has awarded an amount of Rs.8,000/- by way of compensation for loss of well. In almost 8 matters out of 11 on hand in this group, an amount of Rs.8,000/- is awarded by way of compensation for well. In our opinion, when the entire parcel of land under acquisition has been considered, assessed and valued as bagayat land and the total amount of market value is assessed at Rs.240/- as demanded by the claimants, which includes, the value of the well, in our opinion, the claimants shall not be entitled to an additional amount of Rs.8,000/- for well in 8 matters.

It is a settled proposition of law that the amended provisions came into force long after the date of the award of the Land Acquisition Officer. The awards by the Land Acquisition Officer in reference case No.132/77, 91/78, 153/79 and 36/78 came to be passed on 3.8.78, 3.10.80, 5.2.80 and 21.3.80. Thereafter references under section 18 of the Act came to be made to the District Court at Rajkot and the Assistant Judge, Rajkot at Gondal, passed a common judgment in all the references on 26th December, 1985. Therefore, the award under section 18 of the Act modifying the award of the Land Acquisition Officer under section 11 came to be recorded after the amended provisions came into force. With the result, the claimants would be entitled to get 30 per cent solatium on the amount of market value and not on the amount enhanced by the reference Court. It is also clarified that the original claimants will be entitled to amount of interest as provided under section 28 on the amount of enhanced compensation.

The view which we are inclined to take in relation to the provisions of section 23(2) and 28 of the Act is very much reinforced by the following decisions of the Apex Court. There is no dispute about the fact that there is no case of any additional compensation under section 23(1-A).

1. AIR 1989 SC 1933, Union of India v. Raghubir Singh (Bench of 7 Judges).

2. AIR 1990 SC 981, Union of India vs. Filip Tiago De Gama (para 17, 18 & 21).

3. Rafiq Mohmad vs. State of MP, 1996 LACC, 374.

After having considered the factual scenario emerging from the record of the present case and having heard the rival conditions and dispassionately examining the relevant provisions of section 23(1-A) 23(2) and section 28 of the Act and the aforesaid case law, the appears are required to be allowed partly and while parting with, we would like to highlight the following aspects so as to obviate any misgivings.

1. The market rate assessed and fixed by the reference Court at Rs.180/-/- per Are is altered and modified to Rs.240/- per Are as claimed by the appellants-original claimants and the appeals to that extent shall stand allowed.

2. The appellants-claimants shall be entitled to get 30 per cent solatium on the amount of market value without any interest.

3. The conclusion of the reference court that the benefit of the amended provisions of section 28 pertaining to rate of interest on the amount of enhanced compensation is hereby quashed and set aside and instead it is substituted that the claimants shall be entitled to 30 per solatium on the amount of market value in respect of additional amount of compensation.

4. The appellants-claimants shall not be entitled to the amount of compensation of Rs.8,000/- for well as awarded by the reference court and the same is hereby quashed and set aside. In other words, the claimants shall not be entitled to the amount of compensation for the well assessed separately by the reference court.

5. The appellants-claimants shall be entitled to interest as per the amended provisions of section 28 of

the Act.

6. Rest of the common impugned judgment and award shall remain unaffected.

The appeals shall stand partly allowed. In the facts and circumstances of the case, the parties are directed to bear their own costs.

.....